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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,615	11/29/2001	Kenneth B. Albritton	P56341	2308

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EXAMINER

MAI, TRI M

ART UNIT	PAPER NUMBER
3727	

DATE MAILED: 07/25/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

N.K

**Office Action Summary**

<b>Application No.</b> 09/995,615	<b>Applicant(s)</b> ALBRITTON, KENNETH B.	
<b>Examiner</b> Tri M. Mai	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on \_\_\_\_\_ .
- 2a)  This action is **FINAL**.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-35 and 37-44 is/are pending in the application.  
4a) Of the above claim(s) 1-23 and 28-31 is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 24-27, 32-35 and 37-44 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 08 April 2003 is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \*    c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .
- 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other:

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 1-23, and 28-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant traverses the election of species.

With respect to the traversal about the requirement of an election/restriction, it is noted that the claims are distinct with respect to various disclosed species, and there are no generic claims. In the very least, independent claims 1, 15, and 22 cover species that do not read on the elected species as set forth in Applicant's response paper No. 6, pages 5 and 6. Thus, there is no generic claim.

With respect to the burdensome of search on the part of the examiner, as set forth in the previous Office Action, there is a serious burden on the part of the Examiner with respect to the search and/or examination of additional claims with respect to the species disclosed, e.g., claim 15 recites a top shelf, claim 28 recites wheels. Thus, the examiner must conduct a search in other classes and/or subclass, e.g. 190/18A (wheels), Class 220/554 (horizontal partition) in order to fully consider the patentability of these claims. Furthermore, consideration of all the claims in this instant application would require a **tremendous amount of burden** on the Examiner with respect to the numerous claims and confusing nature of the claims.

### *Drawings*

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the width of the bottom portion of the back wall being greater than width of the top portion of the back wall in claim 26, the hanging of

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hangers in claim 32, the first unit capable of hanging the back wall and accommodating the hanging of garments in claim 38, the Davis connected the top the back member and the bottom member in claim 39 must be shown. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Specification*

3. The specification is objected to: the following terms have no antecedent basis in the specification: “the fist extended portion” (cl. 26), “the second extended portion” (cl. 26), “the bottom portion of the back wall” (cl. 26), “the top portion of the back wall” “the first unit” (cl. 24), “a second unit” (cl. 32), and “a bottom portion (cl. 35).

Applicant is reminded the specification must provide proper antecedent basis for all claimed elements.

### *Claim Rejections - 35 USC § 112*

4. Claims 24-27, 32-65, and 37-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 32, it is unclear what comprises the second unit in claim 32.

In claim 33, “the directions” has no antecedent basis. Furthermore, the claim is confusing. The elected species show the compartment facing only one direction. It is unclear what portion of the compartments is being referred to. Furthermore, it is unclear what directions are meant by the recitation.

In claim 38, “a first unit” is a double recitation of the same element in claim 37.

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In claim 24, the claim recites the fastening unit securing the two ends of the back wall. However, in claim 35 recites a bottom portion formed from a bottom of the back wall. And further add to the confusion, in claim 39, the claim recite a bottom member connect the back panel and further recites the connected the top member to the bottom member. It is unclear what edges define a back wall and the bottom portion and/or bottom in these claims. Furthermore, applicant asserts that the pack in Fig. 10 is the same as Fig. 8 is also confusing. It is noted that there is a bottom portion in Fig. 10 with the zipper terminates at point 738. However, it seems that the portion 722 can not be the bottom portion of the back pack, and the zipper would terminate on the back edge of portion 722 and the back wall.

Regarding claim 26, it is unclear where the width of the bottom being greater than the width of a top portion. It seems that the back wall in the drawing of Fig. 10 has a substantially uniform width contrary to the recitation in the claim. Furthermore, it is unclear what are the first and second extended portions as claimed.

***Claim Rejections - 35 USC § 103***

5. Claim 24, 25, 33, 35, 39, 40, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeChant in view of Scott. DeChant teaches a backwall, a first unit 70, a plurality of compartments at 76 as shown in Fig 12, a fastening unit being the Davis. Dechant meets all claimed limitations except for the pair of straps. Scott teaches that it is known in the art to provide a pair of should straps J. It would have been obvious for one of ordinary skill in the art to provide the straps in DeChant as taught by Scott to provide an alternative method to carry the bag.

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Regarding claim 35, note that there is a bottom formed from the bottom the back wall as claimed.

6. Claim 26, 27, 34, 37, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over the DeChant rejection as set forth above in paragraph 5, and further in view of Briggs et al. (4901897). DeChant meets all claimed limitations except for first and second extended portions (a straps), Briggs teaches that it is known in the art to provide first and second extended portions 18. It would have been obvious for one of ordinary skill in the art to provide first and second extended portions in the DeChant rejection as taught by Briggs to keep the contents together.

7. Claim 32, 38, and 43 are rejected by the DeChant rejections, as set forth in paragraph 5, and further in view of Davis et al. (2626689). DeChant meets all claimed limitations except for the second unit accommodating the hanging of hangers. Davis teaches that it is known in the art to provide a second unit 52. It would have been obvious for one of ordinary skill in the art to provide a second unit in DeChant as taught by Davis to accommodate the hanging of clothes.

8. Claims 35, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tong in view of Fournier (6193034), and further in view of Scott. Tong teaches a bag having a back wall formed by portions 111,112, 113, 114, a first unit 13, and a plurality of compartments. Tong meets all claimed limitations except for the compartments of netted material. Fournier teaches that it is known in the art to provide netted compartments 15-23. It would have been obvious to one of ordinary skill in the art provide netted compartments in Tong as taught by Fournier to allow the content to dry easily.

Note the two straps in Tong can be used to carry the bag on the back.

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9. Claims 24, 25, 33, 35, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tong in view of Fournier (6193034), and further in view of Scott. Tong teaches a bag having a back wall formed by portions 111, 112, 113, 114, a first unit 13, a plurality of compartments. Tong meets all claimed limitations except for the compartments of netted material. Fournier teaches that it is known in the art to provide netted compartments 15-23. It would have been obvious to one of ordinary skill in the art provide netted compartments in Tong as taught by Fournier to allow the content to dry easily.

With respect to the pair off straps, it would have been obvious for one of ordinary skill in the art to provide the straps in Tong as taught by Scott to provide an alternative method to carry the bag.

Regarding claim 25 note the two sidewalls 16.

Regarding claims 35 and 37, to the degree it is argued that the strap in Tong cannot be used to carry on a back of a user. It would have been obvious to one of ordinary skill in the art to provide the straps in Tong as taught by Scott to provide an alternative method to carry the bag.

10. Claim 26, 27, 34, 38, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Tong rejection as set forth above in paragraphs 8 and 9, and further in view of Briggs et al. (4901897). Tong meets all claimed limitations except for first and second extended portions (a straps), Briggs teaches that it is known in the art to provide first and second extended portions 18. It would have been obvious for one of ordinary skill in the art to provide first and second extended portions in the Tong rejection as taught by Briggs to keep the contents together.

Regarding claim 33, compartments in Tong faces a plurality of directions in the flat position and in the erected positions.

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11. Claim 32, 38, and 43 are rejected by the Tong rejection, as set forth in paragraphs 8 and 9, and further in view of Davis et al. Tong meets all claimed limitations except for the second unit accommodating the hanging of hangers. Davis teaches that it is known in the art to provide a second unit 52. It would have been obvious for one of ordinary skill in the art to provide a second unit in Tong as taught by Davis to accommodate the hanging of clothes.

12. Claims 39, 40, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tong in view of Scott. Tong teaches a bag having a back wall formed by portions 111, 112, 113, 114, a plurality of compartments. Tong meets all claimed limitations except for the back straps, it would have been obvious for one of ordinary skill in the art to provide the straps in Tong as taught by Scott to provide an alternative method to carry the bag.

***Response to Arguments***

13. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

With respect to the objections to the specification, there is no "top portion of the back wall", and "bottom portion of the back wall" in the specification.

With respect to the two straps handle in Tong can be used to carry the bag on the back, note the cited reference of Kilduff (6386414) teaches the bag can be carried on the back via the two handle straps.

Furthermore, in failure to provide numerical identification for all claimed element, the specification is further objected for failure to provide proper antecedent basis for claimed elements.



With respect to the back panel, the specification fails to describe what edges define the back panel. Since, there are inconsistent with respect to claims as set forth above. The 112 rejection with respect to the back panel stands.

With respect to the rejection over either Tong or Dechant in view of Scott, Scott clearly teaches the two shoulder straps (with only one showing) so that the bag can be used to carry on the back, similar to that of a backpack. It is unclear what is the difference between the strap JJ and the two straps as set forth in the claim.

With respect to the formation of the angle, the term "angle" is broad, the two side can be formed with a zero angle in the flat position or a substantially 90 degrees angle as shown in Fig. 3.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, to provide a two shoulder straps JJ of Scott in the bags of either DeChant or Tong would have been exceedingly obvious to one of ordinary skill in the art. Furthermore, Scott clearly teaches all three types of carrying devices H, I, and J which make the combination much more obvious since the three type of carrying devices in Scott are equivalents and that all of them can be interchanged or can be used together.

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*Conclusion*

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3579 for regular communications and (703)305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

T. Mai